

WIGDOR LLP
85 FIFTH AVENUE, FIFTH FLOOR
NEW YORK, NY 10003
(212) 257-6800

1 DOUGLAS H. WIGDOR (NY SBN 2609469)

dwigdor@wigdorlaw.com

2 MEREDITH A. FIRETOG (NY SBN 5298153)

mfiretog@wigdorlaw.com

(Admitted *pro hac vice*)

4 **WIGDOR LLP**

85 Fifth Avenue, Fifth Floor

New York, NY 10003

Tel.: (212) 257-6800

7 OMAR H. BENGALI (CA SBN 276055)

obengali@girardbengali.com

9 **GIRARD BENGALI, APC**

355 S. Grand Street, Suite 2450

Los Angeles, CA 90071

Tel.: (323) 302-8300

12 Kevin Mintzer (NY SBN 2911667)

km@mintzerfirm.com

Laura L. Koistinen (NY SBN 5755079)

llk@mintzerfirm.com

(Admitted *pro hac vice*)

15 **LAW OFFICE OF KEVIN MINTZER, P.C.**

1350 Broadway, Suite 1410

New York, NY 10018

Tel.: (646) 843-8180

19 *Attorneys for Plaintiff Kellye Croft*

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

21 KELLYE CROFT,

22 Plaintiff,

23 vs.

24 JAMES DOLAN, HARVEY
25 WEINSTEIN, JD & THE STRAIGHT
26 SHOT, LLC, THE AZOFF COMPANY
HOLDINGS LLC f/k/a/ AZOFF
MUSIC MANAGEMENT, LLC, THE

Case No. 2:24-cv-00371-PA (AGR)

**MEMORANDUM OF POINTS AND
AUTHORITIES IN OPPOSITION
TO DOLAN DEFENDANTS'
MOTION TO DISMISS**

27 MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO
28 DOLAN DEFENDANTS' MOTION TO DISMISS

WIGDOR LLP
85 FIFTH AVENUE, FIFTH FLOOR
NEW YORK, NY 10003
(212) 257-6800

1 AZOFF COMPANY LLC f/k/a AZOFF
2 MSG ENTERTAINMENT, LLC, DOE
3 CORPORATIONS 1-10,

Defendants.

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27 MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO
28 DOLAN DEFENDANTS' MOTION TO DISMISS

TABLE OF CONTENTS

1		
2	TABLE OF AUTHORITIES	ii
3	PRELIMINARY STATEMENT	1
4	FACTS	4
5	MOTION TO DISMISS STANDARD	4
6	DISCUSSION	4
7	I. The Amended Complaint States a Claim Against the Dolan	
8	Defendants Under the TVPRA	4
9	A. The Dolan Defendants are Liable as Perpetrators.....	5
10	1. The Dolan Defendants Knowingly Defrauded and	
11	Coerced Croft so that Dolan Could Sexually Exploit Her	6
12	2. The Amended Complaint Alleges a Commercial Sex Act.....	9
13	B. The Dolan Defendants are Liable as Beneficiaries of Sex	
14	Trafficking.....	10
15	II. Plaintiff's Sexual Battery Claim is Plausibly Alleged and is Timely	11
16	A. Croft Has Stated a Claim for Sexual Battery	12
17	B. The Sexual Battery Claim is Timely	14
18	III. Plaintiff's Aiding and Abetting Claim Against Dolan is Sufficiently	
19	Stated and is Not Released	15
20	A. Dolan Aided and Abetted the Weinstein Assault	15
21	B. The TWC Bankruptcy Release Should Not Bar Croft's Claim.....	18
22	CONCLUSION.....	22

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page(s)</u>
<i>Ashcroft v. Iqbal</i> ,	
556 U.S. 662 (2009).....	4
<i>Ass’n for Los Angeles Dpty. Sheriffs v. Cnty. of Los Angeles</i> ,	
648 F.3d 986 (9th Cir. 2011).....	4
<i>Benson v. JPMorgan Chase Bank, N.A.</i> ,	
No. 09 Civ. 05272, 2010 WL 1526394 (N.D. Cal. Apr. 15, 2010).....	17
<i>Canosa v. Ziff</i> ,	
No. 18 Civ. 04115, 2019 WL 498865 (S.D.N.Y. Jan. 28, 2019)	5
<i>Casey v. US Nat Assn.</i> ,	
127 Cal. App. 4th, 1138 (2005)	15, 17
<i>Chemetron Corp. v. Jones</i> ,	
72 F.3d 341 (3d Cir. 1995).....	22
<i>Cromer Fin. Ltd. v. Berger</i> ,	
137 F. Supp. 2d 452 (S.D.N.Y. 2001).....	17
<i>David v. Weinstein Co.</i> ,	
431 F. Supp. 3d 290 (S.D.N.Y. 2019).....	5
<i>Doe v. Fitzgerald</i> ,	
No. 20 Civ. 10713, 2022 WL 425016 (C.D. Cal. Jan. 6, 2022)	11, 13
<i>Eckhart v. Fox News Network, LLC</i> ,	
No. 20 Civ. 05593, 2021 WL 4124616 (S.D.N.Y. Sept. 9, 2021)	5, 8, 10
<i>Geiss v. Weinstein Co. Holdings LLC</i> ,	
383 F. Supp. 3d 156 (S.D.N.Y. 2019).....	7
<i>Harrington v. Purdue Pharma L.P.</i> ,	
144 S. Ct. 44 (2023).....	19

1	<i>Howard v. Superior Ct.</i> ,	
2	2 Cal. App. 4th 745 (1992)	17
3	<i>Hubbard v. Crow</i> ,	
4	No. 23 Civ. 00580-FB, 2023 WL 10366527 (W.D. Tex. Nov. 20, 2023).....	10
5	<i>Huett v. Weinstein Co.</i> ,	
6	No. 18 Civ. 06012, 2018 WL 6314159 (C.D. Cal. Nov. 5, 2018)	8
7	<i>In Matter of Motors Liquidation Co.</i> ,	
8	829 F.3d 135 (2d Cir. 2016).....	20
9	<i>In re First All Mortg. Co.</i> ,	
10	471 F.3d 977 (9th Cir. 2006).....	17
11	<i>In re Lowenschuss</i> ,	
12	67 F.3d 1394 (9th Cir. 1995).....	19
13	<i>In re New Century TRS Holdings, Inc.</i> ,	
14	450 B.R. 504 (Bankr. D. Del. 2011)	21
15	<i>Jarreau-Griffin v. City of Vallejo</i> ,	
16	531 B.R. 829 (E.D. Cal. 2015)	20
17	<i>Logan v. Zimmerman Brush Co.</i> ,	
18	455 U.S. 422 (1982).....	20
19	<i>Lombardo v. Hilburg</i> ,	
20	No. 18 Civ. 01811, 2018 WL 6977473 (C.D. Cal. Dec. 3, 2018)	13
21	<i>Molenda v. Universal City Studios, LLC</i> ,	
22	No. 20 Civ. 02554, 2020 WL 66535 (C.D. Cal. Jun. 6, 2018)	16
23	<i>Mullane v. Cent. Hanover Bank & Tr. Co.</i> ,	
24	339 U.S. 306 (1950).....	20
25	<i>Neilson v. Union Bank of California N.A.</i> ,	
26	20 F. Supp. 2d, 1101 (C.D. Cal. 2003)	15, 17

1	<i>Noble v. Weinstein,</i>	
2	335 F. Supp. 3d 504 (S.D.N.Y. 2018).....	7
3	<i>People of the Territory of Guam v. Camacho,</i>	
4	103 F.3d 863 (9th Cir. 1996).....	10
5	<i>Powers v. Wells Fargo Bank NA,</i>	
6	439 F.3d 1043 (9th Cir. 2006).....	5
7	<i>Russo v. APL Marine Servs., Ltd.,</i>	
8	No. 14 Civ. 03184-ODW, 2014 WL 3506009 (C.D. Cal. July 14, 2014)	13
9	<i>So v. Bay Area Rapid Transit,</i>	
10	No. 12 Civ. 05671 DMR, 2013 WL 5663207 (N.D. Cal. Oct. 17, 2013).....	15
11	<i>Stanley Jacobs Prods., Ltd. v. 9472541 Canada Inc.,</i>	
12	No. 16 Civ. 06223, 2016 WL 9343896 (C.D. Cal. Dec. 6, 2016)	21
13	<i>Su v. Henry Glob. Consulting Grp.,</i>	
14	No. 20 Civ. 02235, 2022 WL 1932 (C.D. Cal. Jan. 3, 2022)	15
15	<i>Teachers' Ret. Sys. of Louisiana v. Aidinoff,</i>	
16	900 A.2d 654 (Del. Ch. 2006)	20
17	<i>United States v. Andrews,</i>	
18	No. 18 Cr. 00256, 2022 WL 9466146 (E.D. Cal. Oct. 14, 2022).....	8
19	<i>United States v. Cook,</i>	
20	782 F.3d 983 (8th Cir. 2015).....	10
21	<i>United States v. Raniere,</i>	
22	55 F.4th 354 (2d Cir. 2022).....	10, 11
23	<i>United States v. Smith,</i>	
24	719 F.3d 1120 (9th Cir. 2013).....	6
25	<i>United States v. Taylor,</i>	
26	44 F.4th 779 (8th Cir. 2022).....	6, 7

WIGDOR LLP
85 FIFTH AVE, FIFTH FLOOR
NEW YORK, NEW YORK 10003
(212) 257-6800

United States v. Todd,

627 F.3d 329 (9th Cir. 2010).....8

Statutes

18 U.S.C. § 1591.....4, 5, 8, 9, 10, 11

18 U.S.C. § 1595.....10

Cal. Civ. Code § 1708.5.....12, 13

Cal. Civ. Proc. Code § 340.16(a) & (b)14

California Penal Code § 243.4(e)(1).....14

Rules

Fed. R. Civ. P. 6(a)(1)(C)14

Fed. R. Civ. P. 8.....4

Fed. R. Civ. P. 12(b)(6)4

Other Authorities

H.R. Rep 106-4874

Casassa, K. et al., “Trauma Bonding Perspectives From Service Providers and
Survivors of Sex Trafficking: A Scoping Review,” *Trauma, Violence, & Abuse*,
23(3), 969-984 (2022), <https://doi.org/10.1177/1524838020985542>.....4

WIGDOR LLP
85 FIFTH AVENUE, FIFTH FLOOR
NEW YORK, NY 10003
(212) 257-6800

1 Plaintiff Kellye Croft submits this Memorandum of Points and Authorities to
2 oppose the Motion to Dismiss of Defendants James Dolan and JD & The Straight
3 Shot LLC (“JDSS”) (collectively, “Moving Defendants” or “Dolan Defendants”).

4 **PRELIMINARY STATEMENT**

5 In 2013, Kellye Croft, a young woman and Licensed Massage Therapist from
6 Tennessee, thought she had received the break of a lifetime. Glenn Frey, a member
7 of the Eagles, offered her a job as a massage therapist on their tour. At the time,
8 Croft did not know that an important person in the Eagles’ orbit was James Dolan,
9 the billionaire business partner of Irving Azoff, the Eagles’ long-time talent
10 manager. Nor did she know that Dolan funded the joint enterprise then known as
11 MSG Entertainment, LLC, which allowed him to position his unremarkable band,
12 JDSS, as the opening act for parts of the Eagles’ tour.

13 Dolan’s role on the tour meant that he could schedule massages with Croft.
14 During his second massage with Croft in Miami, Dolan made aggressive sexual
15 advances toward her. Croft had no interest in sexual contact with Dolan, who was
16 twice her age. But Dolan refused to accept when Croft told him she wanted to keep
17 their relationship professional. He grabbed Croft’s hands, dragged her to a couch
18 and forced her hands between his knees as he sat down. Though she continued
19 protesting his advances, Croft knew that Dolan had enormous power over her, and
20 believed she had to submit to his sexual demands. From there began a pattern of
21 sexual exploitation by Dolan.

22 Late in 2013, a representative of Azoff’s companies extended Croft another
23 invitation to join the Eagles tour in Los Angeles in January 2014. Croft did not know
24 that Dolan or his band would be part of this leg of the tour and accepted. But after
25 she flew to Los Angeles, she learned that she was not staying at the same hotel as
26

WIGDOR LLP
85 FIFTH AVENUE, FIFTH FLOOR
NEW YORK, NY 10003
(212) 257-6800

1 the Eagles, as had been the case earlier on the tour. Instead, her accommodation was
2 in the same hotel with Dolan and JDSS. Soon enough, Croft discovered that she had
3 been lied to about why she was in Los Angeles. The Eagles did not need a massage
4 therapist in L.A. Instead, she was being paid to satisfy the sexual demands of Dolan,
5 who several times summoned her to his room on the pretense of receiving a massage,
6 when in reality he wanted sex. From their first interactions in Miami, Dolan knew
7 that Croft's submission to his demands was not voluntary.

8 Dolan did not stop there. He then set Croft up to be assaulted by his good
9 friend and business associate, Harvey Weinstein, whom Dolan knew to be a sexual
10 predator. Dolan helped Weinstein by orchestrating a "chance" meeting with Croft in
11 the hotel where Weinstein was also staying. Having been primed by Dolan to go
12 after the "massage therapist," Weinstein floated the possibility of work with his
13 movie studio as a pretense to get Croft into a hotel room, where he violently sexually
14 assaulted her. Croft immediately told Dolan about his friend's behavior, but Dolan
15 did not express surprise. On the contrary, Dolan acknowledged that Weinstein was
16 "troubled" and unsafe. Still, Dolan did not suggest that Croft go to the police or offer
17 to help her. Croft, broken by what happened to her, could not continue with her work
18 on the tour, and she flew back to Tennessee soon after.

19 Dolan and JDSS have moved to dismiss Croft's claims, arguing that, even
20 accepting the truth of everything alleged, their conduct was perfectly legal. They are
21 wrong. *First*, Croft has stated a claim against Moving Defendants for perpetrating
22 sex trafficking. Dolan, JDSS and the Azoff Entities, transported Croft to California
23 knowing that fraud and/or coercion would be used to have her commit a commercial
24 sex act. Moving Defendants ignore the allegations showing that they brought her to
25 Los Angeles on the false pretense that she would be performing massage services,

WIGDOR LLP
85 FIFTH AVENUE, FIFTH FLOOR
NEW YORK, NY 10003
(212) 257-6800

1 when she was actually hired to have sex with Dolan. And because Croft received
2 several “things of value” for sexual contact with Dolan—including pay, air travel,
3 and a hotel stay—the commercial sex act element is also satisfied.

4 *Second*, Moving Defendants are also liable as beneficiaries of sex trafficking.
5 Arguing otherwise, they mainly claim that Dolan’s sexual gratification cannot be a
6 benefit of sex trafficking, but that argument is belied by the text of the sex trafficking
7 statute as well as the weight of the caselaw.

8 *Third*, Dolan contends that he is not liable for sexual battery because he did
9 not intend to make offensive contact against Croft. But Dolan asks the Court to
10 ignore, among other relevant facts, that he started his sexual “relationship” with
11 Croft by physically forcing himself on her against her will and disregarding her
12 refusals. His intent is thus a disputed factual matter that cannot be resolved on a
13 motion to dismiss. Croft’s sexual battery claim is also timely under California’s
14 revival law because Dolan’s alleged conduct is a sexual battery under the California
15 Penal Code.

16 *Finally*, Croft has stated a claim for aiding and abetting Weinstein’s sexual
17 assault on her. The facts support the reasonable inference that Dolan orchestrated
18 the meeting between Croft and Weinstein, knowing that his friend was dangerous
19 and likely to attack her if Croft did not submit, thus establishing the substantial
20 assistance and prior knowledge elements of the claim. This claim is also not barred
21 by the release that Dolan received in The Weinstein Company (“TWC”) bankruptcy.
22 The Supreme Court is poised to decide whether a nonconsensual release of a
23 nondebtor—precisely the relief Dolan received—is lawful. And even if that
24 bankruptcy release could be valid, here Croft was denied due process because she
25 was never provided with the required notice of the TWC bankruptcy.

WIGDOR LLP
85 FIFTH AVENUE, FIFTH FLOOR
NEW YORK, NY 10003
(212) 257-6800

1 **FACTS**

2 Plaintiff refers the Court to the Statement of Facts in her Memorandum of
3 Points and Authorities in Opposition to the Azoff Entities Motion to Dismiss (“Azoff
4 Opposition”), ECF No. 55 at 2-7, and the Amended Complaint (“AC”), ECF No. 48.

5 **MOTION TO DISMISS STANDARD**

6 Fed. R. Civ. P. 8 requires a complaint to be a “short and plain statement of the
7 claim showing that the pleader is entitled to relief.” To overcome a motion to dismiss
8 under Fed. R. Civ. P. 12(b)(6), “a complaint must contain sufficient factual matter,
9 accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v.*
10 *Iqbal*, 556 U.S. 662, 678 (2009) (internal quotations omitted). “A claim has facial
11 plausibility when the plaintiff pleads factual content that allows the court to draw
12 the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.*
13 In evaluating the motion, a court must “accept all factual allegations in the complaint
14 as true,” “construe the pleadings in the light most favorable to the nonmoving party,”
15 and “draw[] all reasonable inferences in favor of the plaintiff.” *Ass’n for Los Angeles*
16 *Dpty. Sheriffs v. Cnty. of Los Angeles*, 648 F.3d 986, 991 (9th Cir. 2011).

17 **DISCUSSION**

18 **I. The Amended Complaint States a Claim Against the Dolan** 19 **Defendants Under the TVPRA**

20 Moving Defendants’ arguments to dismiss Croft’s first cause of action under
21 The Trafficking Victims Protection Reauthorization Act (“TVPRA”), 18 U.S.C.
22 §§ 1591, 1595, should be denied. To begin, Moving Defendants suggest that Croft
23 cannot bring a claim under the TVPRA because the statute is only meant to address
24 “a contemporary manifestation of slavery.” Dolan Mem. 4 (citing H.R. Rep 106-
25 487). But statutes must be interpreted based on their *text*, not legislative history.

WIGDOR LLP
85 FIFTH AVENUE, FIFTH FLOOR
NEW YORK, NY 10003
(212) 257-6800

Powers v. Wells Fargo Bank NA, 439 F.3d 1043, 1045 (9th Cir. 2006) (recognizing that “legislative history, even when clear, may not overcome or displace the textual mandate of a statute”). Nothing in the text of the TVPRA suggests that it should be understood to cover only slavery and similar offenses and courts have consistently rejected the Dolan Defendants’ argument that it only applies to archetypes of human trafficking and contemporary slavery. *See Eckhart v. Fox News Network, LLC*, No. 20 Civ. 05593, 2021 WL 4124616, at *7 (S.D.N.Y. Sept. 9, 2021) (holding that TVPRA applies to cases not involving forced prostitution and sexual slavery) (citing cases); *Canosa v. Ziff*, No. 18 Civ. 04115, 2019 WL 498865, at *23 (S.D.N.Y. Jan. 28, 2019) (“[Defendants’] attempt to cabin the TVPA to reach only caricatures of child slavery, and to exclude corporate-supported conduct, is wholly unpersuasive.”). As discussed below, Croft plausibly asserts claims against the Dolan Defendants as perpetrators and beneficiaries of sex trafficking.

A. The Dolan Defendants are Liable as Perpetrators

To state a claim against a sex trafficking perpetrator under § 1591, plaintiff “must adequately plead that [the Dolan Defendants] knowingly and in interstate or foreign commerce: (1) recruited, enticed, harbored, transported, provided, obtained, or maintained by any means a person; (2) knowing, or in reckless disregard of the fact, that means of force, threats of force, fraud . . . or any combination of such means will be used; (3) to cause the person to engage in a commercial sex act.” *David v. Weinstein Co.*, 431 F. Supp. 3d 290, 298 (S.D.N.Y. 2019) (internal quotations omitted). Here, the Dolan Defendants wrongly argue that Croft has not pleaded the second and third elements.

1 1. The Dolan Defendants Knowingly Defrauded and Coerced Croft so
2 that Dolan Could Sexually Exploit Her

3 Croft plausibly alleges that Dolan and JDSS brought her to California
4 knowing they were using fraud and coercion to have her commit a commercial sex
5 act. Because “fraud” is not defined in the TVPRA, courts apply the word’s ordinary
6 meaning: “an instance or an act of trickery or deceit especially when involving
7 misrepresentation.” *United States v. Smith*, 719 F.3d 1120, 1125 (9th Cir. 2013)
8 (*quoting* Webster’s Third New International Dictionary 904 (2002)) (cleaned up).
9 That is what occurred here.

10 In late 2013, an Azoff representative, acting in concert with Dolan, invited
11 Croft to join the Eagles tour in Los Angeles to perform massage services for the
12 Eagles at their show at the refurbished L.A. Forum. AC ¶¶ 47-48, 58. But the Eagles
13 had no need for Croft’s services. *Id.* ¶ 59. Not one band member signed up for a
14 massage with Croft, and Croft spent most of her time at the Forum with nothing to
15 do. *Id.* ¶ 58. The real reason that Moving Defendants and the Azoff Entities
16 transported Croft to California was so she could provide sexual services to Dolan,
17 who requested Croft’s presence and paid for Croft’s travel expenses on the “JD credit
18 card.” *Id.* ¶ 59. And Defendants arranged for Croft to stay at the Peninsula Hotel,
19 where Dolan and his band were staying, *not* where the Eagles or the other tour staff
20 were staying. *Id.* ¶ 56. This arrangement, a departure from Croft’s work on the tour,
21 made it convenient for Dolan to summon Croft to his hotel room for sex. *Id.*
22 Accepting these facts as true, a factfinder could conclude that Moving Defendants
23 committed fraud to have Croft engage in a commercial sex act.

24 *United States v. Taylor*, 44 F.4th 779 (8th Cir. 2022), a criminal case brought
25 under the TVPRA, is instructive. In *Taylor*, defendant hired a young woman, A.L.,
26

WIGDOR LLP
85 FIFTH AVENUE, FIFTH FLOOR
NEW YORK, NY 10003
(212) 257-6800

1 to work at his massage business, ostensibly to provide massages. *Id.* But defendant’s
2 clients expected sexual services, and at least one of those clients pressured A.L. into
3 performing a sex act, which she reluctantly did. *Id.* Following defendant’s
4 conviction, he argued that there was insufficient evidence that force, fraud or
5 coercion would be used on A.L. The Eighth Circuit disagreed, holding that a
6 reasonable jury could find that fraud was used to have A.L. engage in a commercial
7 sex act because defendant knew that A.L. and the clients had different expectations
8 about what would occur at the massage appointments. *Id.* at 790.

9 Like the defendant in *Taylor*, Defendants here led Croft to believe that she
10 was being transported to California to provide massage services for the Eagles. It
11 was only after she accepted the opportunity that she discovered the Eagles had no
12 need for her massage services, and that her presence was about satisfying Dolan’s
13 sexual demands, whom she did not even know would be on the tour until *after* she
14 accepted the job. Having been deceived, Croft submitted to Dolan’s demands
15 because, given his power, she understood that rejecting him would jeopardize her
16 work with the Eagles and others. This case is thus similar to others in which courts
17 have approved trafficking claims against defendants who fraudulently enticed a
18 victim to engage in commercial sex based on illusory offers of work or career
19 benefits. *See Geiss v. Weinstein Co. Holdings LLC*, 383 F. Supp. 3d 156, 168
20 (S.D.N.Y. 2019) (agreeing with other courts that TVPRA “extends to enticement of
21 victims by means of fraudulent promises of career advancement, for the purpose of
22 engaging them in consensual or . . . non-consensual sexual activity”); *Noble v.*
23 *Weinstein*, 335 F. Supp. 3d 504, 518 (S.D.N.Y. 2018) (same).

24 The facts also support a finding that Moving Defendants knowingly used
25 coercion to have Croft engage in sex acts because Plaintiff reasonably believed that
26

WIGDOR LLP
85 FIFTH AVENUE, FIFTH FLOOR
NEW YORK, NY 10003
(212) 257-6800

1 failing to engage in the sex act would result in significantly serious financial harm.
2 *See* 18 U.S.C. § 1591(e)(2)(B) (defining “coercion” to include any scheme or plan
3 intended to cause a person to believe that the failure to perform an act would cause
4 “serious harm”); *id.* § 1591(e)(5) (defining “serious harm” to mean “any harm . . .
5 including . . . financial . . . harm, that is sufficiently serious, under all the surrounding
6 circumstances, to compel a reasonable person of the same background and in the
7 same circumstances to perform or to continue performing commercial sexual activity
8 in order to avoid incurring that harm”). Based on the facts alleged, it is reasonable
9 to infer that Moving Defendants knew that, once they had Croft isolated and alone,
10 she would be too scared to lose the seemingly incredible career opportunity of
11 working with the Eagles to reject Dolan’s advances.

12 Moving Defendants wrongly argue that Croft cannot show that they acted with
13 the requisite knowledge because Plaintiff does not allege that Dolan had an
14 established modus operandi. Dolan Mem. 6-7 (citing *United States v. Todd*, 627 F.3d
15 329, 334 (9th Cir. 2010)). But Moving Defendants ignore allegations that when they
16 transported Croft to Los Angeles, Dolan had ***already*** assaulted Plaintiff in Miami,
17 AC ¶¶ 37-44, establishing that he would use force, fraud and coercion to push Croft
18 into commercial sex acts. And while *Todd* and *Huett v. Weinstein Co.*, No. 18 Civ.
19 06012, 2018 WL 6314159, at *2-3 (C.D. Cal. Nov. 5, 2018), recognized that
20 multiple victims could prove that defendant knew that force, fraud or coercion would
21 be used to cause a victim to engage in commercial sex act, the courts did not hold
22 that a pattern of victims is the ***only*** way to establish the requisite knowledge. *See*
23 *United States v. Andrews*, No. 18 Cr. 00256, 2022 WL 9466146, at *2 (E.D. Cal.
24 Oct. 14, 2022) (rejecting the interpretation of *Todd* advanced by the Moving
25 Defendants as “illogical”); *Eckhart*, 2021 WL 4124616, at *10 (recognizing that a

WIGDOR LLP
85 FIFTH AVENUE, FIFTH FLOOR
NEW YORK, NY 10003
(212) 257-6800

1 “modus operandi is but one of several ways a plaintiff can show [defendant’s]
2 knowledge” that force, fraud or coercion would be used).

3 Likewise unpersuasive is Moving Defendants’ claim that, because Dolan
4 sometimes acted like he cared about Croft, he could not have defrauded or coerced
5 her into participating in a commercial sex act. The fraud here—lying to Croft about
6 the reason she was being flown to California—occurred well *before* he pretended as
7 though he cared about her. AC ¶ 43. In any case, a common feature of sexual abuse
8 and trafficking is that perpetrators sometimes act kindly towards their victims to get
9 what they want. *See* Casassa, K. et al., “Trauma Bonding Perspectives From Service
10 Providers and Survivors of Sex Trafficking: A Scoping Review,” *Trauma, Violence,*
11 *& Abuse*, 23(3), 969-984 (2022), <https://doi.org/10.1177/1524838020985542>
12 (Summarizing literature showing phenomena of “trauma bonds” between sex
13 traffickers and victims, in which sex traffickers alternated between “abuse and
14 kindness”). That Dolan manipulated Croft in this way does not negate his knowledge
15 that Croft was being defrauded and coerced so that he could sexually exploit her.

16 2. The Amended Complaint Alleges a Commercial Sex Act

17 Moving Defendants next argue that Croft’s TVPRA claim fails because she
18 does not plead that she engaged in a commercial sex act. As they concede, however,
19 “commercial sex act” is broadly defined to include “any sex act on account of which
20 anything of value is given to or received by any person.” 18 U.S.C. § 1591(e)(3).
21 This standard is easily met here. In exchange for engaging in sex acts with Dolan,
22 Croft’s flight to and hotel accommodations in Los Angeles were paid for using the
23 “JD credit card,” AC ¶ 48, and the Azoff Entities paid her for working on the Eagles
24 tour, *id.* ¶ 58, all “things of value.” While that arrangement provided a veneer of
25 legitimacy, Moving Defendants were in reality paying Croft for sex with Dolan. *Id.* ¶

WIGDOR LLP
85 FIFTH AVENUE, FIFTH FLOOR
NEW YORK, NY 10003
(212) 257-6800

59. That defendants did not expressly articulate a quid pro quo does not defeat Croft’s claims. *See Eckhart*, 2021 WL 4124616, at *9 (citing cases).

B. The Dolan Defendants are Liable as Beneficiaries of Sex Trafficking

The Dolan Defendants are alternatively liable as beneficiaries of sex trafficking. To state such a claim, Plaintiff must allege that Moving Defendants “[1]knowingly benefit[ed] . . . by receiving anything of value [2] from participation in a venture [3] which [they] knew or should have known has engaged in an act in violation of this chapter.” 18 U.S.C. § 1595. Contrary to Moving Defendants’ argument, the Amended Complaint pleads facts establishing each element.

As to the first element, Dolan knowingly benefited from participating in a sex trafficking venture because he received sexual gratification from Croft. “Benefits” within the scope of sections 1591(a)(2) and 1595(a) include “financial[]” benefits as well as “anything of value,” a phrase that also appears in the definition of “commercial sex act,” § 1591(e)(3), discussed above. Contrary to Moving Defendants’ argument, sexual gratification is a “thing of value.” *See United States v. Ranieri*, 55 F.4th 354, 361 (2d Cir. 2022) (recognizing that “sexual intercourse” or “the promise of sexual intercourse” are “things of value” under the TVPRA) (internal quotations omitted); *United States v. Cook*, 782 F.3d 983, 988 (8th Cir. 2015) (holding that the ordinary meaning of the phrase “things of value” in section 1591(a)(2) encompasses “sex acts”); *Hubbard v. Crow*, No. 23 Civ. 00580-FB, 2023 WL 10366527, at *9 (W.D. Tex. Nov. 20, 2023) (complaints plausibly alleged defendant received “things of value” from trafficking venture based on allegations that defendant received sex acts from the plaintiff); *see also People of the Territory*

WIGDOR LLP
85 FIFTH AVENUE, FIFTH FLOOR
NEW YORK, NY 10003
(212) 257-6800

1 *of Guam v. Camacho*, 103 F.3d 863, 866 (9th Cir. 1996) (holding that under official
2 misconduct regulation “sexual gratification” is a “benefit”).

3 The one case cited by Moving Defendants for the proposition that sexual
4 gratification is not a “thing of value,” *Doe v. Fitzgerald*, No. 20 Civ. 10713, 2022
5 WL 425016, at *6 (C.D. Cal. Jan. 6, 2022), is inconsistent with the case law
6 discussed above. *Fitzgerald* also fails to respect Congress’ intent—as reflected in
7 the law’s text—to have the phrase “thing of value” be “broadly understood to include
8 intangibles.” *Ranieri*, 55 F.4th at 361. Here, a factfinder could conclude that the sex
9 acts that Dolan received because of his participation in a venture with the Corporate
10 Defendants were valuable to him. JDSS likewise benefited from the venture because
11 Dolan sought to make Croft available for sexual services to his bandmates, including
12 one who asked Croft for a “prostate massage.” AC ¶ 67.

13 Moving Defendants’ other arguments against a beneficiary theory of liability
14 are insubstantial. They claim that there was no venture between them and the Azoff
15 Entities. But “venture” means “any group of two or more individuals associated in
16 fact, whether or not a legal entity.” 18 U.S.C. § 1591. As explained in the Azoff
17 Opposition, the association between Dolan, JDSS and the Azoff Entities satisfies
18 this definition. *See* ECF Dkt. No. 55 at 18-20. Finally, Moving Defendants’ assertion
19 that they had no knowledge that fraud, force or coercion would be used to traffic
20 Croft is meritless for the same reasons discussed in Section I(A), *supra*.

21 **II. Plaintiff’s Sexual Battery Claim is Plausibly Alleged and is Timely**

22 Dolan argues that Plaintiff’s second cause of action for sexual battery should
23 be dismissed because he did not act with intent to cause harmful conduct and the
24 claim is not timely. Dolan Mem. 10-14. Dolan is incorrect on both counts.

WIGDOR LLP
85 FIFTH AVENUE, FIFTH FLOOR
NEW YORK, NY 10003
(212) 257-6800

A. Croft Has Stated a Claim for Sexual Battery

As Dolan acknowledges, Cal. Civ. Code § 1708.5(a)(1) defines sexual battery as “[a]cts with the intent to cause a harmful or offensive contact with an intimate part of another, and a sexually offensive contact with that person directly or indirectly results.” “Offensive contact” means “contact that offends a reasonable sense of personal dignity.” Cal. Civ. Code § 1708.5(d)(2). Applying those standards, Croft has plausibly alleged that Dolan intentionally engaged in sexually offensive contact. AC ¶¶ 119, 121.

As alleged, Dolan first offensively touched Plaintiff on the Miami-leg of the Eagles tour in November 2013. Towards the end of the massage Croft was giving him, Dolan began to make unwanted advances on her. AC ¶ 40. When Dolan pulled Croft toward him, she told him that she was very uncomfortable and wanted to stay professional. *Id.* Dolan ignored her wishes, grabbed Croft’s hands, dragged her to a couch, and forced her hands between his knees as he sat down. *Id.* ¶ 42. Croft remained adamant that she did not want sexual contact with him, but Dolan continued to pressure her until she gave in to his persistent advances and had intercourse with him. *Id.* This context, ignored by Defendants, is critical for Croft’s interactions with Dolan in California in January 2014, after Dolan and the Azoff Entities fraudulently lured her to California.

Based on their interactions in Miami, Dolan knew that Croft did not want sexual contact with him, a man twice her age. Dolan also knew that he had flown Croft out to California under false pretenses, was paying for her accommodations, and was effectively her employer. Thus, when Dolan summoned Croft to his hotel room and made sexual demands of her, Dolan knew that Croft did not want to have sex with him and that he was leveraging the immense power he held over her to

WIGDOR LLP
85 FIFTH AVENUE, FIFTH FLOOR
NEW YORK, NY 10003
(212) 257-6800

1 sexually gratify himself. *See Lombardo v. Hilburg*, No. 18 Civ. 01811, 2018 WL
2 6977473, at *6 (C.D. Cal. Dec. 3, 2018) (finding battery sufficiently pleaded where
3 defendant allegedly coerced plaintiff into sexual contact based on plaintiff's
4 economic vulnerability). Dolan's intent is a question of fact that cannot be resolved
5 on the pleadings.¹

6 The authorities cited by Dolan do not suggest otherwise. In *Russo v. APL*
7 *Marine Servs., Ltd.*, No. 14 Civ. 03184-ODW, 2014 WL 3506009, at *6 (C.D. Cal.
8 July 14, 2014), the complaint was unclear whether there had been any sexual contact
9 after plaintiff had objected; the question of whether the defendant intended to cause
10 offensive contact was not before the court. In *Fitzgerald*, 2022 WL 425016, at *6,
11 the court held that defendant's intent could not be inferred about one plaintiff
12 because the complaint alleged *no* facts other than that the defendant engaged in sex
13 acts against plaintiff's will. As discussed above, far more has been pleaded here.
14 Indeed, Croft's claim is more like the co-plaintiffs in *Fitzgerald* who alleged that
15 defendant had pressured them to engage in sex acts as part of a "sexual swap" in
16 which the defendant "traded" sex partners with his friend. As to those plaintiffs, the
17 court found the circumstances sufficient to infer that the defendant knew that the
18 sexual contact would offend their sense of personal dignity. *Id.* *10. Here, too, it is
19 reasonable to infer from their prior interactions, in which Croft made clear her lack
20 of interest in Dolan, that Dolan knew that subjecting her to unwanted sexual contact
21 with him would offend her sense of personal dignity. Cal. Civ. Code § 1708.5(d)(2).

22
23 ¹ Contrary to Dolan's assertion, the location and timing of Dolan's offensive touching
24 of Croft are plausibly alleged. The Amended Complaint states that events occurred at the
25 Peninsula Hotel in Beverly Hills, where Dolan and Croft were both staying for the Eagles
tour. AC ¶¶ 5, 53, 56, 68. The Los Angeles leg of the Eagles tour took place in the second
half of January 2014. *Id.* ¶ 68.

B. The Sexual Battery Claim is Timely

Croft’s claim is timely under California’s revival statute, which creates a statute of limitations of 10 years for civil claims for sexual assault if the sexual assault occurred on or after January 1, 2009, and the sexual assault constitutes a crime under specified sections of the California Penal Code. Cal. Civ. Proc. Code § 340.16(a) & (b). One of those sections, California Penal Code § 243.4(e)(1), provides that a sexual battery occurs when a person “touches an intimate part of another person, if the touching is against the will of the person touched, and is for the specific purpose of sexual arousal, sexual gratification, or sexual abuse.”²

As explained above, Croft’s sexual battery claim satisfies the requirements of this section because Croft has alleged that Dolan touched the intimate parts of her body, and that the touching was offensive and against her will. *See* Section II(a), *supra*. Dolan argues that Section 243.4(e)(1) is a specific intent crime, but the Amended Complaint alleges that Dolan’s actions toward Croft were motivated by his sexual desires, *e.g.*, AC ¶ 11, 59, the intent required in the statute. Furthermore, because Plaintiff has alleged that the Los Angeles leg of the tour did not begin until mid-January 2014, *id.* ¶ 68, Dolan’s sexually battery of Croft in California would have necessarily occurred within the limitations period.³ Thus, Dolan’s motion to dismiss Plaintiff’s sexual battery claim should be denied.

² Contrary to Dolan’s suggestion, based on the plain meaning of the revival law, *all* sexual battery offenses identified in section 243.4 are revived. There is no exception for a misdemeanor battery.

³ Plaintiff filed this action on January 16, 2024. The preceding three days were a federal holiday and a weekend. *See* Fed. R. Civ. P. 6(a)(1)(C). Thus, based on the applicable ten-year statute of limitations, this claim would be timely for any conduct on or after January 13, 2014.

1 **III. Plaintiff's Aiding and Abetting Claim Against Dolan is Sufficiently** 2 **Stated and is Not Released**

3 Dolan next asserts that Croft's Fourth Cause of Action for aiding and abetting
4 Harvey Weinstein's sexual assault of her should be dismissed for failure to allege
5 the essential elements of the claim. Alternatively, he contends the claim is barred by
6 a release and injunction from a Delaware bankruptcy court issued in connection with
7 the bankruptcy of TWC. Neither of these arguments are persuasive.

8 **A. Dolan Aided and Abetted the Weinstein Assault**

9 A cause of action for aiding and abetting requires a plaintiff to plead that (1)
10 defendant had actual knowledge "that a tort had been, or was to be committed, and
11 (2) acted with the intent of facilitating the commission of that tort." *Casey v. US Nat*
12 *Assn.* 127 Cal. App. 4th, 1138, 1148 (2005) (internal quote and citation omitted).
13 Here, Plaintiff has pleaded sufficient facts to satisfy both elements. As to the first
14 element, Plaintiff need only "allege generally that [Dolan] had actual knowledge of
15 a specific primary violation." *Neilson v. Union Bank of California N.A.* 20 F. Supp.
16 2d, 1101, 1120 (C.D. Cal. 2003) "A plaintiff may plead actual knowledge through
17 inference." *So v. Bay Area Rapid Transit*, No. 12 Civ. 05671 DMR, 2013 WL
18 5663207, at *12 (N.D. Cal. Oct. 17, 2013); *see also Su v. Henry Glob. Consulting*
19 *Grp.*, No. 20 Civ. 02235, 2022 WL 1932, at * 4 (C.D. Cal. Jan. 3, 2022) (actual
20 knowledge "may be averred generally").

21 Contrary to Dolan's argument, Dolan Mem. 15-16, Croft's allegations support
22 an inference that Dolan had actual knowledge that Weinstein would sexually assault
23 her. Plaintiff and Weinstein met at the Peninsula Hotel where Dolan had arranged
24 for her to stay. AC ¶¶ 69-70. Weinstein was also staying at the Peninsula. *Id.* ¶ 75.
25 When Croft and Weinstein met in the lobby of the hotel—a meeting which, as
26 alleged, was orchestrated by Dolan, unbeknownst to Croft, *id.* ¶ 11—Weinstein

WIGDOR LLP
85 FIFTH AVENUE, FIFTH FLOOR
NEW YORK, NY 10003
(212) 257-6800

1 revealed he already knew who Croft was from Dolan. *Id.* ¶ 71. Weinstein then
2 invited Plaintiff to his room, purportedly to discuss work opportunities for her, and
3 eventually demanded that Plaintiff give him a massage while he was naked. *Id.*
4 ¶¶ 75, 82-88. Plaintiff was terrified and managed to persuade him to let her leave his
5 room, but Weinstein followed her, barged into her room and sexually assaulted her.
6 *Id.* ¶¶ 89-93. In the middle of the assault, Plaintiff wriggled free. *Id.* ¶ 95. Weinstein
7 then said to Plaintiff that Dolan was his “best friend” and would “be very
8 disappointed that you led me on,” *id.* ¶¶ 94-96, suggesting that Dolan knew what he
9 had planned to do to Croft.

10 Beyond Weinstein’s statement, when Plaintiff, distraught over what
11 Weinstein had just done to her, told Dolan that Weinstein was “sexually aggressive”
12 Dolan responded that Weinstein was a “troubled person” with “serious issues.”
13 AC ¶¶ 8, 99. Dolan did not console Plaintiff or advise her to report the assault to the
14 police. *Id.* ¶ 99. Contrary to Dolan’s assertion, this exchange does not merely
15 establish that Dolan knew Weinstein attacked Croft *after* it happened. Rather, it
16 supports an inference that Dolan was not surprised by what Weinstein had done and
17 that he knew that his good friend and business associate, *id.* ¶¶ 9, 96, 99, had a history
18 of engaging in similar sexual misconduct. For this reason, *Molenda v. Universal City*
19 *Studios, LLC*, No. 20 Civ. 02554, 2020 WL 66535, at * 3 (C.D. Cal. Jun. 6, 2018),
20 cited by Dolan, is distinguishable. Unlike here, in *Molenda*, there were no facts
21 alleged to suggest that the defendants’ reactions to plaintiffs’ reports suggested that
22 they had prior knowledge of what the primary tortfeasor planned to do. Moreover,
23 in light of that knowledge and Dolan’s assistance in having Weinstein “randomly”
24 meet with Croft in a hotel, a factfinder could conclude that Dolan had actual
25 knowledge of Weinstein’s plan to assault Plaintiff and sought to protect himself and
26

WIGDOR LLP
85 FIFTH AVENUE, FIFTH FLOOR
NEW YORK, NY 10003
(212) 257-6800

1 his friend from any criminal consequences. *See Benson v. JPMorgan Chase Bank,*
2 *N.A.*, No. 09 Civ. 05272, 2010 WL 1526394, at *4 (N.D. Cal. Apr. 15, 2010)
3 (recognizing that bank’s close business relationships with third parties who were
4 engaged in a Ponzi scheme supported inference that bank knew of scheme).⁴

5 Plaintiff has also sufficiently alleged that Dolan acted with the intent to
6 facilitate Weinstein’s sexual assault of Plaintiff. A defendant acts with the requisite
7 intent when he knowingly “gives substantial assistance or encouragement to the
8 other to so act[.]” *Casey*, 127 Cal. App. 4th at 1144. (internal quote omitted). But
9 substantial assistance does not require proof that “defendant agreed to join the
10 wrongful conduct.” *Howard v. Superior Ct.*, 2 Cal. App. 4th 745, 749 (1992),
11 *modified* (Feb. 10, 1992) (internal quote and citation omitted). Instead, substantial
12 assistance requires only “the plaintiff to allege that the actions of the aider/abettor
13 proximately caused the harm on which the primary liability is predicated.” *Cromer*
14 *Fin. Ltd. v. Berger*, 137 F. Supp. 2d 452, 470 (S.D.N.Y. 2001); *Neilson*, 290 F. Supp.
15 2d at 1129-30 (same).

16 Here, the facts alleged show that Dolan substantially assisted Weinstein in his
17 sexual assault of Plaintiff. As discussed above, Plaintiff has alleged that she
18 encountered Weinstein, who was staying at the same hotel as her, in the hotel lobby
19 when she returned from an outing Dolan encouraged. AC ¶¶ 68, 99. For purposes of

20 ⁴ *Casey v. U.S. Bank Nat. Assn.*, 127 Cal. App. 4th 1138 (2005), discussed in *In re*
21 *First All Mortg. Co.*, 471 F.3d 977, 994 n.4 (9th Cir. 2006), also cited by Dolan, does not
22 support his argument. *Casey* held that a plaintiff must allege an aider and abettor had
23 knowledge of the particular wrong to be committed by the principal actor, and not merely
24 allege that an aider and abettor was aware that the principal actor was generally engaged
25 in wrongful conduct. *Casey*, 127 Cal. App. 4th at 1151-52. As described above, the
26 Amended Complaint contains sufficient allegations that Dolan knew that Weinstein was
27 planning on sexually assaulting Croft, not just that he knew Weinstein would engage in
28 some wrongful conduct.

WIGDOR LLP
85 FIFTH AVENUE, FIFTH FLOOR
NEW YORK, NY 10003
(212) 257-6800

Dolan’s motion, the Court should not assume that this encounter happened by “chance,” as Dolan asserts. Rather, Croft should be granted the inference that Dolan informed Weinstein where she was staying and when she would return to the hotel. Dolan’s substantial assistance is also reflected by the fact that he had told Weinstein, a man he knew to be a sexual predator, “great things” about Plaintiff, whom Dolan apparently described as his “massage therapist.” AC ¶ 71. What’s more, because Dolan was talking to members of his band about his sexual exploits with Croft and encouraged them to believe she was sexually available, *id.* ¶¶ 65-67, it is reasonable to infer that he had similar conversations with Weinstein, “one of his best friends.” *Id.* ¶¶ 71, 96, 99. Based on these facts and granting Plaintiff all reasonable favorable inferences, Weinstein would have never been able to assault Plaintiff without Dolan’s help. Thus, Dolan substantially participated in Weinstein’s sexual assault of Plaintiff because his actions proximately caused Weinstein’s assault of Croft. Dolan’s motion to dismiss Plaintiff’s aiding and abetting claim for failure to state a claim should be denied.

B. The TWC Bankruptcy Release Should Not Bar Croft’s Claim

Dolan next argues that Croft’s aiding and abetting claim should be dismissed because it conflicts with a release and channeling injunction issued by a Delaware bankruptcy court in connection with the bankruptcy of The Weinstein Company. As background, Dolan served on the Board of Directors of TWC from about mid-2015 to June 2016. In 2018, after Harvey Weinstein’s predatory conduct became public, TWC filed for bankruptcy. Later, as part of the TWC chapter 11 plan of reorganization in which a modest fund was established for Weinstein’s sexual assault victims, Dolan and TWC’s other former representatives secured releases for themselves for liabilities related to Weinstein’s sexual misconduct. As Dolan notes,

WIGDOR LLP
85 FIFTH AVENUE, FIFTH FLOOR
NEW YORK, NY 10003
(212) 257-6800

1 the release and accompanying channeling injunction purport to extinguish the claims
2 of all sexual misconduct victims of Harvey Weinstein against him and other former
3 representatives of the TWC, even for matters pre-dating their service on the TWC
4 board, and even for claims of intentional misconduct. Croft did not participate in or
5 receive notice of the TWC bankruptcy, she did not consent to waive her claims and
6 she received no financial compensation or other consideration for a release of her
7 claims. *See* Declaration of Kellye Croft (“Croft Dec.” ¶¶ 5-7). Still, Dolan maintains
8 that the release should apply to bar her fourth cause of action.

9 The Court should reject this argument for two reasons. First, the bankruptcy
10 court lacked authority to approve a nonconsensual release of claims against Dolan
11 and others who did not file for bankruptcy. The Ninth Circuit has long disapproved
12 of nonconsensual releases of third party nondebtors as unauthorized by bankruptcy
13 law. *See In re Lowenschuss*, 67 F.3d 1394, 1401 (9th Cir. 1995). While the TWC
14 bankruptcy plan was confirmed by a Third Circuit bankruptcy court, which has
15 sustained nonconsensual releases of nondebtors, the Supreme Court recently
16 received briefing and oral argument on the following question: “Whether the
17 Bankruptcy Code authorizes a court to approve, as part of a plan of reorganization
18 under Chapter 11 of the Bankruptcy Code, a release that extinguishes claims held by
19 nondebtors against nondebtor third parties, without the claimants’ consent.”
20 *Harrington v. Purdue Pharma L.P.*, 144 S. Ct. 44 (2023). Should the Court answer
21 in the negative, the TWC bankruptcy release that Dolan seeks to invoke here would
22 have been beyond the bankruptcy court’s power to grant and should not be enforced
23 against Croft. Thus, the Court should not rule on the enforceability of the TWC
24 bankruptcy release until *Harrington* is decided.

WIGDOR LLP
85 FIFTH AVENUE, FIFTH FLOOR
NEW YORK, NY 10003
(212) 257-6800

1 Second, even if the bankruptcy court had the power to approve the release,
2 applying it to bar Croft's aiding and abetting claim, which she has a property interest
3 in, would violate Croft's Fifth Amendment right to due process. *See Logan v.*
4 *Zimmerman Brush Co.*, 455 U.S. 422, 428 (1982). "An elementary and fundamental
5 requirement of due process in any proceeding which is to be accorded finality is
6 notice reasonably calculated, under all the circumstances, to apprise interested
7 parties of the pendency of the action and afford them an opportunity to present their
8 objections." *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950).
9 If the identity of a creditor whose property interest may be affected by a bankruptcy
10 is reasonably ascertainable at the time of the bankruptcy petition, due process
11 requires that the debtor provide actual notice—not publication notice—to that
12 creditor. *In Matter of Motors Liquidation Co.*, 829 F.3d 135, 159 (2d Cir. 2016).

13 Here, Croft informed Dolan, who later became a board member of TWC,
14 about Weinstein's sexual misconduct of her. AC ¶ 98. Croft's identity as a potential
15 creditor of the TWC was thus reasonably ascertainable by TWC, through Dolan. *See*
16 *Teachers' Ret. Sys. of Louisiana v. Aidinoff*, 900 A.2d 654, 671 n.23 (Del. Ch. 2006)
17 (under Delaware law, the general rule is that knowledge of an officer or director of
18 a corporation is imputed to the corporation). As a result, Croft was entitled to actual
19 notice of the TWC bankruptcy, but she received no notice of those proceedings.
20 Croft Dec. ¶ 6.⁵ The release of claims in favor of Dolan contained in the TWC

21 _____
22 ⁵ Dolan points out that Croft's counsel in this case was also involved in the TWC
23 bankruptcy proceedings. That is true, but irrelevant. Croft was not represented by counsel
24 until long after the TWC bankruptcy plan was confirmed. Croft Dec. ¶¶ 2-3. Thus,
25 counsel's knowledge of the plan during the TWC proceedings cannot be imputed to Croft.
26 *See Jarreau-Griffin v. City of Vallejo*, 531 B.R. 829, 833 (E.D. Cal. 2015) (holding that
plaintiff did not have actual notice of a bankruptcy because his counsel was aware of
bankruptcy based on separate representation of a different client years earlier). Dolan also
suggests that Croft should not have filed her fourth cause of action under the terms of the

WIGDOR LLP
85 FIFTH AVENUE, FIFTH FLOOR
NEW YORK, NY 10003
(212) 257-6800

1 confirmation plan thus cannot bar Croft's claim against him. *See Stanley Jacobs*
2 *Prods., Ltd. v. 9472541 Canada Inc.*, No. 16 Civ. 06223, 2016 WL 9343896, at *5
3 (C.D. Cal. Dec. 6, 2016) (denying motion to dismiss where pleadings did not
4 establish that plaintiff received sufficient notice of bankruptcy proceedings).

5 Even if Croft were not entitled to actual notice of her claims being released
6 (which she was), the publication notice was inadequate to apprise her that she was
7 at risk of forfeiting her potential claims. "Due process requires notice that is
8 'reasonably calculated to reach all interested parties, reasonably conveys all the
9 required information, and permits a reasonable time for response.'" *In re New*
10 *Century TRS Holdings, Inc.*, 450 B.R. 504, 513 (Bankr. D. Del. 2011) (internal
11 quotation omitted). While publication in national newspapers is often deemed
12 sufficient, *id.*, the three media outlets in which TWC apparently advertised its
13 chapter 11 plan—Variety, The Hollywood Report ("THR") and the New York Post
14 ("NYP")—are not national newspapers but entertainment trade publications and a
15 local tabloid. Given the nature of TWC's business, advertising in Hollywood
16 publications may have been reasonable to target *some* of Harvey Weinstein victims,
17 but it was unreasonable to expect that most of Weinstein's victims read Hollywood
18 trade publications or a New York City paper. Croft resided in Tennessee during the
19 TWC bankruptcy and read none of the publications. Croft Dec ¶¶ 4-5. On a motion
20 to dismiss, Dolan has not met his burden of proving that publication in these outlets
21 was enough to meet due process requirements as applied to Croft. *In re New Century*
22 *TRS Holdings, Inc.*, 450 B.R. at 514 (holding that sufficiency of publication for due
23 process purposes could not be determined on a motion to dismiss, even though

24
25
26 TWC channeling injunction, but he cites no authority that Croft is precluded from arguing
in a collateral proceeding that she was denied due process in the TWC bankruptcy.

WIGDOR LLP
85 FIFTH AVENUE, FIFTH FLOOR
NEW YORK, NY 10003
(212) 257-6800

1 bankruptcy notice was placed in one national newspaper and one regional
2 newspaper).

3 Finally, even if these publications could theoretically be considered sufficient,
4 the advertisements in this case did not “reasonably convey[] all the required
5 information” for due process purposes. *Chemetron Corp. v. Jones*, 72 F.3d 341, 346
6 (3d Cir. 1995). As it relates to Croft’s claims, the advertisements make no mention
7 of James Dolan, but refer generically to “debtors’ former directors and officers.” *See*
8 *Firetog Dec. Exs. A-C*. Croft had no idea that Dolan fell into either category. Croft
9 Dec. ¶ 3. So even if Croft came across these advertisements, they would have
10 provided no notice that the TWC bankruptcy plan could have resulted in a forfeiture
11 of her claim against Dolan. Under these circumstances, the publication notice
12 provided was inadequate and did not satisfy due process. Thus, the release and
13 channeling injunction should not bar Croft’s fourth cause of action against Dolan.

14 **CONCLUSION**

15 For the reasons stated above, the Dolan Defendants’ Motion to Dismiss the
16 Amended Complaint should be denied.

WIGDOR LLP
85 FIFTH AVENUE, FIFTH FLOOR
NEW YORK, NY 10003
(212) 257-6800

1 Dated: May 13, 2024

Respectfully submitted,

2
3 By: Meredith Firetog
4

5 **WIGDOR LLP**

6 Douglas H. Wigdor (Admitted *pro hac vice*)
7 Meredith A. Firetog (Admitted *pro hac vice*)
8 85 Fifth Avenue, Fifth Floor
9 New York, NY 10003
10 Telephone: (212) 257-6800
11 dwigdor@wigdorlaw.com
12 mfiretog@wigdorlaw.com

13 **LAW OFFICE OF KEVIN MINTZER,**
14 **P.C.**

15 Kevin Mintzer (Admitted *pro hac vice*)
16 Laura L. Koistinen (Admitted *pro hac vice*)
17 1350 Broadway, Suite 1410
18 New York, New York 10018
19 km@mintzerfirm.com
20 llk@mintzerfirm.com

21 **GIRARD BENGALI, APC**

22 Omar H. Bengali
23 355 S Grand Avenue, Suite 2450
24 Los Angeles, California 90071
25 Telephone: (323) 302-8300
26 obengali@girardbengali.com

27 *Attorneys for Plaintiff Kellye Croft*

1 **CERTIFICATE OF COMPLIANCE**

2 The undersigned, counsel of record for Plaintiff Kellye Croft, certifies that
3 this brief contains 6908 words, in compliance with Local Rule 11-6.1
4

5 Dated: May 13, 2024

6 Respectfully submitted,

7
8 By: Meredith Firetz
9

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
WIGDOR LLP
85 FIFTH AVENUE, FIFTH FLOOR
NEW YORK, NY 10003
(212) 257-6800